

**Council on Postsecondary Education
Committee on Equal Opportunities
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News Articles of Interest

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HERALD-LEADER

Universities await ruling on race

Pursuing diversity may get harder

By Linda B. Blackford

HERALD-LEADER EDUCATION WRITER

Every spring, seven law professors at the University of Kentucky gather to consider more than 1,000 applications they receive.

Each application is read by one professor, then presented to the group. The committee looks at LSAT scores, grades, activities, leadership, potential, background and gender.

And race.

"We depend on the aggregate judgment to ensure we have a diverse class," said Law School Dean Allen Vestal. "We want the law school to reflect the population of the state."

But Vestal and academics all over Kentucky are looking toward Washington, D.C., where in March or April, the Supreme Court will rule on two cases against the University of Michigan's admissions policies.

None of Kentucky's public universities use the same policy as Michigan's law school -- assigning actual numeric points for someone's race.

If the court simply addresses that policy, Kentucky won't be affected.

But if the justices take a broader view -- if for example, they overturn the 1978 Bakke case, which found that colleges could consider race and ethnicity in admissions decisions as long as they didn't set aside a certain number of seats for racial groups -- the decision could have varying effects on the ways Kentucky universities are trying to erase the historic vestiges of segregation.

For example, open admissions schools, like the regional universities, don't use race in admissions. But they do try to diversify their student body through recruitment and scholarships.

But selective schools, such as UK and the University of Louisville, and different graduate programs around the state, do consider race as one of the factors they use to admit students.

"It could be very challenging to ensure diversity if we are not allowed to look at a broad range of qualities in an applicant, including race," said Laura Rothstein, dean of the Brandeis School of Law at the University of Louisville.

The national debate started when the Supreme Court agreed to hear the case against Michigan, and reignited last week when President George Bush's administration filed briefs against Michigan's policy.

State goal: 7.3%

The federal Office of Civil Rights is monitoring Kentucky to make sure the state improves black enrollment and graduation in its public universities. (The latest agreement expired on Dec. 31, but the

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enrollment and graduation in its public universities. (The latest agreement expired on Dec. 31, but the office is supposed to inform Kentucky whether it has complied by March 31.)

The state goal is to get enrollment of about 7.3 percent statewide, which mirrors the state's African-American population. The current African-American Kentucky resident enrollment from last fall is 8.3 percent.

Sherron Jackson, who oversees the agreement for the Council on Postsecondary Education, said if the Supreme Court takes a broad view in ruling against Michigan, it could change the way the Office of Civil Rights advises states on meeting federal Title VI guidelines on equal access and opportunity for students, faculty and staff.

Schools might no longer have to worry whether they had student diversity or not.

"They would have to see how that ruling would affect their agreements," Jackson said.

Kentucky's regional universities are open access, which means they accept everyone who has a high school degree and meets certain test and grade standards.

But they still have goals for minority enrollment. Morehead State University, for example, has surpassed its target of a minority enrollment of 1.7 percent, which mirrors the region. Its current minority enrollment is closer to 3 percent.

Because they don't use race in admissions, Morehead and the other regionals have to depend on outreach, recruiting and scholarships to attract minority students.

"We do a lot of recruiting in Lexington, Louisville and Northern Kentucky," said Francene Botts Butler, Morehead's affirmative action coordinator. "We don't have a rigid goal, but we have to be able to show progress."

Eastern Kentucky University, for example, serves about 400 students from Kentucky on the Rodney Gross Scholarships.

"Diversity is definitely a goal for ECU, because there's a primary benefit not just to the campus, but to society, to help prepare people for life after college," said Aaron Thompson, assistant vice president for enrollment management.

The University of Kentucky accepts about 84 percent of its undergraduates on the basis of test scores and grades. The other 16 percent have to have a 2.0 GPA, but then the admissions office looks at other qualities, such as talent, leadership and diversity -- whether it's geographic or racial.

"We do not have any weighting formula, but the admission folks have a sense of what we're looking for," said Phillip Kraemer, associate provost for undergraduate education.

UK's minority population is about 6 percent.

Kraemer disagrees with President Bush's assertion that more states should use the Texas method -- automatic admission to state schools for every student in the top 10 percent of their high school class.

A report released Thursday by a Princeton sociologist found that Texas universities are less diverse than they were before affirmative action ended there.

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The Texas plan also depends on segregated high schools to create diversity.

"When he lauds that, he's really exposing a failure in that state," Kraemer said.

Effect on graduate schools

If schools were not allowed to consider race in any way, the biggest blows would probably be to graduate schools (which traditionally have had less diversity and consider race directly) and the schools in the far reaches of the state.

"We are not very diverse to begin with," said Jackie Leach, president of the Association of Black Collegians at ECU. "If they say it's not important, we will really go backward."

Jason Williams of Louisville heads the Black Law Students Association at UK, where he came after graduating from Yale.

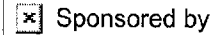
"Race is not the sole factor, but it's something to look at to make sure we have diversity," he said. "One of the reasons for graduate school is to learn from each other; without diversity, it inhibits that exchange."

Dennis Taulbee, general counsel for the Council on Postsecondary Education, says Kentucky needs to go forward with help, not hindrance, from the federal government.

"From our standpoint, we think there's a lot of work that remains to be done," he said. "It's in everyone's advantage to encourage everyone. We don't want anything to stop the progress we've made."

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
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January 16, 2003

President Faults Race Preferences as Admission Tool

By NEIL A. LEWIS

 WASHINGTON, Jan. 15 — President Bush offered a sweeping denunciation of direct preferences for racial minorities in university admissions today and said his administration would file a brief with the Supreme Court urging that the affirmative action admissions policies at the University of Michigan be declared unconstitutional.

"I strongly support diversity of all kinds, including racial diversity in higher education," Mr. Bush said in a nationally televised address. "But the method used by the University of Michigan to achieve this important goal is fundamentally flawed. At their core, the Michigan policies amount to a quota system that unfairly rewards or penalizes prospective students based solely on their race."

In putting himself on the side of three white students who assert they were denied admission to the undergraduate and law programs in favor of less qualified minority candidates, Mr. Bush moved to the front lines of the nation's debate about affirmative action programs.

The president said that while he believed there should be a way to ensure more minority students in universities, programs like the ones at Michigan "create another wrong and thus perpetuate our divisions."

Such programs, he said, "are divisive, unfair and impossible to square with our Constitution."

In a sign of the careful political calibration of his words, the president repeatedly used the term "quotas" to describe Michigan's admissions policy, a word that inevitably draws strong opposition in polls.

The president's decision to intervene in the case was significant because the Bush administration was not legally involved and did not have to take a position.

Despite the broad-gauge language in Mr. Bush's address this evening, the possible scope of the brief that the administration will file with the Supreme Court on Thursday remained unclear.

Shortly after the president spoke, a senior White House official involved in drafting the brief told reporters it would be "very narrowly tailored" to address only the Michigan programs.

The official, who spoke on the condition he not be identified, said the administration's brief would not call for the court to overturn the holding in the landmark 1978 Bakke decision that race could be a factor in university admissions.

When the official was asked whether Mr. Bush and the administration believed race may ever be a factor, he declined to reply directly and said, "We need not address in this case the outer limits of what

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is constitutional."

The president's statement pleased many in his party's conservative base. Yet it also comes at a time that the Republican Party has been in turmoil over racially charged statements by Senator Trent Lott of Mississippi, which may have set back the party's efforts to increase its appeal to minority voters. Democrats were quick to denounce the administration's position on affirmative action and portray it as a true measure of Mr. Bush and his party.

Senator Tom Daschle of South Dakota, the minority leader, was one of several Democrats who said the president's approach to the University of Michigan should be viewed as a litmus test of the administration's commitment to civil rights.

Senator John Kerry, a Massachusetts Democrat who is seeking the presidency, said, "This administration continues a disturbing pattern of using the rhetoric of diversity as a substitute for real progress on a civil rights agenda."

Ari Fleischer, the president's spokesman, dismissed any idea that the White House deliberations over how to confront the issue had been influenced by politics.

"The president is dismissive of any notion involving the political implications of a decision on a matter as important and sensitive as something involving race and admission to college campuses, which is how Americans get their opportunity to make it in our country," Mr. Fleischer said at the White House briefing.

Mr. Bush's comments today came after four moderate Republicans had urged him to oppose the plaintiffs in the Michigan lawsuit. The senators, Arlen Specter of Pennsylvania, Olympia J. Snowe and Susan Collins of Maine and Lincoln Chafee of Rhode Island, said in a letter to the president that universities should be able to take race into direct account.

"Many Republicans throughout the nation believe that diversity should be recognized as a compelling government interest in the admissions policies" of universities, they wrote.

Many conservatives were elated by Mr. Bush's stance. However, there was still uncertainty among longtime opponents of affirmative action, who worried that his administration's brief might not go far enough.

Linda Chavez, president of the Center for Equal Opportunity, a group that works to end racial preferences, applauded the president's remarks. But she said it would be a disappointment if Mr. Bush left the door open to the slightest possibility that it would be acceptable to consider race in admissions.

"If the court leaves any door open on taking race into account," Ms. Chavez said, "you'll just have more and more creative attempts from university administrators to accomplish what they have been doing for years."

Ms. Chavez said that for the administration to maintain its credibility on the issue with its conservative supporters, it would have to say directly that race may not be taken into account because there is no compelling state interest in promoting diversity. In the Michigan cases, the court is set to decide whether there is a compelling state interest in a diverse student body to justify preferences for minority students.

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The court will also have to decide whether the Michigan programs were narrowly tailored to meet that goal and did not go too far.

Mr. Bush said today that the programs were unconstitutional because they relied too heavily on race. In Michigan's undergraduate school, minority candidates were given extra points in a formula to decide whether they could be admitted.

The law school simply counted race as one factor among many. But Bush administration lawyers say it operated as a quota system because in practice it resulted in the incoming class always having a similar percentage of minority students.

Lee C. Bollinger, who was the president of the University of Michigan when the litigation began, said the president was incorrect in his characterization of the programs.

Mr. Bollinger, who is now the president of Columbia University, said in a telephone interview that Mr. Bush "is simply incorrect" and that "these are not quotas."

He said Mr. Bush was using that label "to try and isolate a program and make it seem exceptional, but the fact of the matter is that Michigan's program is virtually the same as those of selective universities across the country."

In his remarks, Mr. Bush suggested that it was acceptable to take race into account in what has sometimes been called the original definition of affirmative action, simply reaching out to minorities to apprise them of opportunities.

"University officials have the responsibility and the obligation to make a serious, effective effort to reach out to students from all walks of life without falling back on unconstitutional quotas," Mr. Bush said. "Schools should seek diversity by considering a broad range of factors in admissions, including a student's potential and life experiences."

He also cited a program in Texas, where he was governor, in which students in the top 10 percent of each high school class are guaranteed admission to the University of Texas.

The senior White House official who spoke to reporters said the president believed that "we need to try, if at all possible, to promote the broadest amount of diversity without taking race into account."

In its brief, the university argues that with strictly race-blind admissions, it could not possibly build the "critical mass" of minority students necessary to make diversity more than an empty promise.

Despite strong recruitment efforts, the university said, the law school received only 35 applications from minority students at the top range of undergraduate grades and law board scores that account for nearly all admissions. In contrast, the school received 900 applications from white students in that range.

Even with a "race-blind lottery," the brief said, "the percentage of African-American students enrolled would almost certainly fall below 3 percent."

The court is set to hear arguments in the case in April and is expected to issue a decision this spring.

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THE CHRONICLE OF HIGHER EDUCATION

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Today's News

Thursday, January 9, 2003

<http://chronicle.com/daily/2003/01/2003010901n.htm>**Justice Department Reportedly Is Prepared to Challenge Affirmative Action in 2 Supreme Court Cases**By PETER SCHMIDT

Washington

The U.S. Justice Department has drafted legal briefs intended to challenge the University of Michigan's race-conscious admissions policies in two cases before the Supreme Court, a source close to the department's deliberations said Wednesday. But the Bush administration has not decided what - if anything -- it will tell the Supreme Court on the issue, a White House spokeswoman said.

The administration could file the briefs drafted by the Justice Department, or it could still choose to stay out of the cases, or to take some other course of action. But the existence of the Justice Department briefs challenging Michigan's admissions policies was interpreted by sources familiar with the administration's deliberations as a sign that the White House is extremely unlikely to side with the University of Michigan before the Supreme Court.

The Supreme Court announced last month that it would take up two separate lawsuits challenging Michigan's race-conscious admissions policies: *Gratz v. Bollinger*, dealing with the admissions policies of the university's main undergraduate college, and *Grutter v. Bollinger*, dealing with admissions to the University of Michigan Law School (*The Chronicle*, December 13). The high court is being asked to decide whether the university's policies violate the Equal Protection Clause of the U.S. Constitution, or whether the maintenance of racial and ethnic diversity on campuses is a compelling government interest that justifies giving some advantage to minority applicants.

The justices are expected to hear oral arguments in March and to rule in June. The outcome of the cases is expected to affect admissions policies of colleges nationwide.

Sources close to the White House say the Bush administration has been divided over what position to take on the cases. Solicitor General Theodore B. Olson, who would have signed off on the Justice Department briefs submitted to the White House this week, and Attorney General John D. Ashcroft are reported to favor submitting briefs in opposition to Michigan's policies. (Mr. Olson represented the white plaintiff in the case *Hopwood v. Texas*, which challenged the admissions policies at the University of Texas Law School and led to a 1996 ruling by the U.S. Court of Appeals for the Fifth Circuit striking down race-conscious admissions.)

But other officials within the White House have expressed concern that a stand against race-conscious admissions policies could hurt the Bush administration's efforts to appeal to minority voters, especially in the wake of the recent racially charged controversy over remarks by U.S. Sen.

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Trent Lott that led to his resignation as Senate majority leader.

Monica Goodling, a spokeswoman for the Justice Department, said Wednesday that her agency had "no comment about what we will be doing in the University of Michigan case."

Mercy M. Viana, a spokeswoman for the White House, said that "it is not unusual for the Department of Justice to discuss high-profile cases with the White House," but added, "We don't talk about those discussions publicly."

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Today's News

Thursday, January 9, 2003

<http://chronicle.com/daily/2003/01/2003010902n.htm>

Hispanic Groups Urge Bush to Support U. of Michigan's Defense of Affirmative Action in Admissions

By PETER SCHMIDT

Washington

The leaders of a dozen prominent Hispanic groups issued an open letter on Wednesday asking President Bush to support the University of Michigan in its battle to preserve affirmative action in college admissions.

The letter urges the White House to file legal briefs on Michigan's behalf before the U.S. Supreme Court, which has taken up one case challenging Michigan's undergraduate admissions policies, and a second case challenging the admissions policies of the university's law school.

The letter warns that if the Supreme Court rules against Michigan and prohibits the consideration of race and ethnicity in college admissions, "the percentage of Latino youth graduating from higher education would drop substantially." Not only would fewer Hispanic students be admitted to colleges, but colleges might be precluded from operating financial-aid and support programs geared toward Hispanic students, the letter says.

"Ending affirmative action would shut the door to the American dream for a vast number of our citizens," the letter argues.

The letter notes that just 11 percent of the nation's Hispanic population has obtained a postsecondary education, compared with 28 percent of the non-Hispanic white population. "This is totally unacceptable," it says.

Among those signing the letter was Antonio R. Flores, president of the Hispanic Association of Colleges and Universities, which represents 340 higher-education institutions that serve large concentrations of Hispanic students. He issued a separate statement that said: "We are hopeful that the U.S. Supreme Court will not turn back the clock, but reaffirm once again support of the nation's highest court for inclusion and diversity in higher education."

The Bush administration has not yet decided what, if any, stand it will take on the Michigan cases.

Among the other signatories to the letter were top officials of the League of United Latin American Citizens, the Mexican American Legal Defense and Education Fund, the National Association of Hispanic Publications, the National Council of La Raza, and the United States Hispanic Chamber of Commerce.

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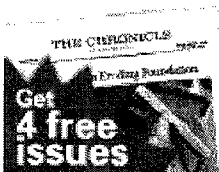
The letter's contention that an end to affirmative action would depress Hispanic enrollments was challenged on Wednesday by Curt A. Levey, director of legal and public affairs at the Center for Individual Rights, which is representing the white plaintiffs in the lawsuits challenging Michigan's policies. He noted that in three states whose public colleges have stopped using race- and ethnicity-conscious admissions policies -- California, Florida, and Texas -- Hispanic enrollments are about where they were when the affirmative-action policies were in place.

Mr. Levey also argued that "if these groups truly represent Hispanics, they should be on our side," because Michigan has acknowledged in court that its law school's admissions policies give an advantage only to two subsets of the Hispanic population: Mexican-Americans, and Puerto Ricans raised in the mainland United States. "If you are another type of Hispanic, you are discriminated against, just as if you are white," he says.

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Government & Politics

From the issue dated December 13, 2002

A Supreme Court Showdown**The justices take up 2 Michigan cases and the debate over affirmative action in admissions**

By PETER SCHMIDT and JEFFREY SELINGO

The U.S. Supreme Court agreed last week to weigh in on the legal debate over affirmative action in college admissions, by taking up two cases involving the University of Michigan. But

it remains to be seen whether the justices will put that debate to rest.

The court announced that it would hear two lawsuits brought against the University of Michigan's Law School and the main undergraduate program at its flagship campus, in Ann Arbor. The justices are expected to hear oral arguments in March and to rule in June.

Nearly a quarter century has passed since the Supreme Court's last ruling on affirmative action in college admissions, in 1978, and in the intervening years, lower-court judges have reached very different conclusions about what that decision meant and what race-conscious admissions policies, if any, it allowed.

Many higher-education leaders and legal scholars say they are relieved that the court has decided to revisit the matter.

But because the justices are essentially evenly split along

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ideological lines, it is hard to predict how the court will rule. And there is a strong possibility that the justices will end up issuing a split -- or highly nuanced -- opinion that will leave the legal landscape nearly as hard to navigate as it is now.

The justices' decision to consider the undergraduate case, *Gratz v. Bollinger*, was highly unusual, because the U.S. Court of Appeals for the Sixth Circuit has yet to rule on the lawsuit. The Sixth Circuit ruled on the law-school case, *Grutter v. Bollinger*, in May, writing in a 5-to-4 decision that the school's admissions policy was permissible under the U.S. Constitution.

As is typical when the Supreme Court decides whether to hear an appeal, the justices issued no statements about their reasons for taking up the cases.

The uncertainty over how the court will rule has focused attention on Justice Sandra Day O'Connor, who is seen as likely to provide the swing vote in the case. One possibility outlined by a few legal scholars would be a 4-4-1 decision, with Justice O'Connor writing a separate opinion.

"There's a risk that there won't be a majority decision," said Douglas Laycock, a professor at the University of Texas School of Law.

Such a scenario would roughly follow the court's 1978 decision, in *Regents of the University of California v. Bakke*. In that 5-to-4 ruling, Justice Lewis F. Powell Jr. wrote in a separate opinion that public colleges could not use quotas in admissions but could give some consideration to race in an effort to enroll a diverse student body for educational reasons.

Colleges have relied on Justice Powell's opinion in defending their affirmative-action programs over the last two decades. But critics of such policies, and some judges, have held that the four other justices in the *Bakke* majority did not embrace Justice Powell's diversity rationale and instead viewed race-conscious admissions policies as a means to remedy societal discrimination. Noting that the Supreme Court subsequently rejected the use of affirmative action to remedy societal discrimination, in cases involving public employment and contracting, the critics of race-conscious admissions policies say that *Bakke* no longer applies.

If Justice O'Connor were to issue a separate opinion, it is likely that she would support the *Bakke* precedent, predicted Michael A. Olivas, a law professor at the University of Houston. "Her past writings indicate that she has no desire to overturn *Bakke*."

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But the confusion over the meaning of *Bakke* may convince the justices that college officials need a clearer message from the court, some lawyers said. "It's important to remember that this will be the first time since 1978 that the justices will have a chance to comment on affirmative action in admissions, and they will want to get it right," said Sheldon E. Steinbach, vice president and general counsel of the American Council on Education.

Ready to Defend

The University of Michigan had urged the Supreme Court to turn away both cases. In their brief opposing the court's intervention in the law-school case, the university's lawyers argued that both academic selectivity and racial diversity are "integral to the educational mission" of the law school and that "the only way for the law school to achieve meaningful diversity in its student body (while maintaining academic selectivity) is to take race into account in admissions."

Upon learning last week that the Supreme Court had taken up the cases, university officials said that they were ready to defend their admissions policies.

"We believe these are very strong cases," said Mary Sue Coleman, the university's president, who has been on the job just a few months. "Our use of *Bakke* has helped create an educational environment that is second to none. This is a historic opportunity to shape the future of higher education."

Ms. Coleman's predecessor, Lee C. Bollinger, a former Michigan law dean who was the university's president when the lawsuits were filed, said he was "highly optimistic" that the Supreme Court would not overturn the *Bakke* decision. Mr. Bollinger, who is now president of Columbia University, said he hoped the court would continue to give universities some latitude in selecting their classes. "I don't expect the court to say, Here are the four things you must do," he said. "There must be some ambiguity to allow universities to have autonomy over their admissions process."

But the autonomy granted by the *Bakke* ruling is exactly what led to the Michigan lawsuits, argues Roger B. Clegg, a lawyer at the Center for Equal Opportunity, which opposes affirmative action. "The court has trusted governments and universities to exercise self-restraint," he said. "Justice Powell intended to leave the door slightly ajar for careful and limited use for racial considerations, and universities, under pressure to be politically correct, have driven a truck right through that door."

On the Ann Arbor campus, students' reaction to the Supreme Court decision was muted, in part because a snowstorm there on the day of the announcement kept many indoors.

Still, about two dozen students gathered on the steps of the student union to hold a news conference about their plan to organize a national march on Washington when the Supreme Court hears the case. Their ranks included several members of a group called the Coalition to Defend Affirmative Action & Integration, and Fight for Equality by Any Means Necessary, as well as several students who have intervened as defendants in the law-school case.

"We will prevail if we mobilize," said Agnes I. Aleobua, a senior at Michigan who is listed as one of the intervenors.

"The conservatives, the resegregationists, have thrown down the gauntlet," said Luke Massie, a leader of the coalition. "Every single person who stands for integration and equality in this society must take a stand at this time."

The students chanted, "Black, Latino, Arab, Asian, and white! United for equality, we will fight!" A few engaged in a heated debate with James Wilson, editor of *The Michigan Review*, a conservative student newspaper on the campus, who had shown up to present an opposing point of view.

Afterward, Mr. Wilson said that the Supreme Court's action pleased him because it meant that the public would see the extent to which the university uses racial preferences in admissions. "At the very least," he said, "people will know what they are up against."

The court's decision also was welcomed by Carl Cohen, a professor of philosophy and critic of affirmative action at Michigan who, during the mid-1990s, used freedom-of-information laws to prod the university to disclose its race-conscious admissions policies. "For me it is a question of justice and fairness," he said.

Deeply Divided Circuit Court

The request for the Supreme Court to take up the law-school case was filed by Barbara Grutter, a white woman rejected by the school in 1997. Her lawyers argued that the Sixth Circuit court had erred in ruling that the government has a compelling interest in maintaining racial and ethnic diversity on campuses, and that the admissions policy at Michigan's law school was narrowly tailored to give just enough consideration to race

without unduly harming nonminority applicants.

The lawyers' petition for Supreme Court review of the case noted that the Sixth Circuit was deeply divided in its decision.

The court's majority held that the law school's race-conscious admissions policy is permissible under the Constitution, because the educational benefits of a racially diverse campus justify the use of such policies, where needed, to maintain enrollments of black, Hispanic, or American Indian students.

But the minority said that the case "involves a straightforward instance of racial discrimination by a state institution," and that Michigan was operating the equivalent of an illegal quota system.

The Sixth Circuit's decision reversed a March 2001 ruling by Judge Bernard A. Friedman of U.S. district court, who concluded that Michigan was using illegal quotas because the law school consistently kept minority enrollments above certain levels. The lawyers for Ms. Grutter have asked the Supreme Court to hold that the Sixth Circuit erred when it rejected Judge Friedman's factual conclusions and accepted the university's contention that it had eschewed numerical goals, seeking only to enroll a "critical mass" of students from each minority group.

Also urging the Supreme Court to hear the case were lawyers representing the student intervenors, who got involved to present the argument -- disputed by the university -- that Michigan's race-conscious admissions policies are needed to remedy past and present discrimination by the institution.

Although they agreed with the Sixth Circuit's decision to leave Michigan's policy intact, they argued that the appeals court had ignored evidence of racial discrimination by the university. They also were hoping to persuade the Supreme Court to articulate a broad remedial justification for affirmative action in college admissions, thereby enabling colleges nationwide to use race-conscious admissions policies.

"The bias and discrimination inhering in test scores and grades make it impossible for the law school to assess individual applications fairly without reference to race," the intervenors' brief argued.

"Absent affirmative action," the brief went on, "the admissions program at Michigan or any other law school would function as a rigidly unfair double standard, downgrading the achievements and promise of black, Latino, and Native

American applicants, and giving the applications of white students a boost produced by unearned racial privilege."

The university's brief argued that the Supreme Court should not revisit the case because the *Bakke* precedent remains good law, and because the law school's admissions policy complies with the guidelines that Justice Powell laid out. The brief said that the law school's consideration of race in admissions "is moderate in scope, treats all applicants as individuals, and does not employ quotas or set-asides (or their functional equivalent)."

The brief also argued that the Supreme Court cannot strike down the law school's admissions policy without overturning the *Bakke* decision, and that the lawyers for the rejected white applicant have offered "no persuasive justification for making such a radical and disruptive break with settled precedent."

Ms. Grutter's lawyers argued, in their brief, that the diversity rationale articulated by Justice Powell did not represent the views of the four justices who concurred with him. Moreover, the brief said, several subsequent Supreme Court decisions -- in cases involving the government's use of preferences for minority candidates for jobs or contracts -- have taken a dim view of the practice for reasons other than remedying specific acts of discrimination.

Differing Opinions

The lawyers for the university and for Ms. Grutter differed sharply in their characterizations of how divided the federal courts are over affirmative action in college admissions.

The university's lawyers argued that Justice Powell's diversity rationale has been rejected by only one federal appeals court: the U.S. Court of Appeals for the Fifth Circuit, which covers Louisiana, Mississippi, and Texas, and in 1996 struck down the race-conscious admissions policy used by the University of Texas law school. That decision "has gained no adherents elsewhere," the university's brief said.

The brief acknowledged that the 11th Circuit, which covers Alabama, Florida, and Georgia, overruled a race-conscious admissions policy at the University of Georgia in August 2001. The document noted, however, that that ruling did not reject Justice Powell's diversity rationale. Instead, the decision focused on the details of the university's policy, finding it to be discriminatory because it automatically gave a substantial advantage to many minority applicants.

Decisions upholding both race-conscious admissions policies and Justice Powell's rationale have been issued by two courts of appeal: the Sixth Circuit, which encompasses Kentucky, Michigan, Ohio, and Tennessee, and the Ninth Circuit, which covers nine Rocky Mountain and Pacific states. That court upheld a race-conscious admissions policy at the University of Washington's law school in a December 2000 ruling.

Ms. Grutter's lawyers characterized the level of disagreement among the federal courts as "sharp and substantial." Their description of the legal landscape was echoed in a separate brief, filed by the attorneys general of 10 states, that asked the Supreme Court to take up the case because the appeals courts "are split on a question of fundamental importance" and "cannot resolve that question on their own."

"Only this court can provide the necessary authoritative guidance that will produce uniformity of analysis and predictability of results in the lower courts," the brief by the state attorneys general said. The document did not endorse or condemn affirmative action in higher education, but said that the states and their selective colleges need clarity on the issue of "whether and to what degree they may consider the race of applicants in attempting to create a diverse student body."

William H. Pryor Jr., the attorney general of Alabama, took the lead in filing the brief. The other signatories were the attorneys general of Delaware, Nebraska, Oklahoma, Oregon, South Dakota, Texas, Utah, Virginia, and West Virginia, as well as the attorney general of the U.S. Commonwealth of the Northern Mariana Islands.

The lawsuit challenging Michigan's undergraduate admissions policy, *Gratz v. Bollinger*, was filed in 1997 on behalf of two white applicants rejected by the university's College of Literature, Science, and the Arts. The plaintiffs' lawyers appealed to the Sixth Circuit soon after Judge Patrick J. Duggan of the U.S. district court ruled in Michigan's favor, in December 2000. Even though the Sixth Circuit heard both the law-school and undergraduate cases at the same time, it has yet to reach a decision in *Gratz*.

The lawyers for the plaintiffs in the *Gratz* case had urged the Supreme Court to hear arguments without waiting for the Sixth Circuit to rule. Their petition for Supreme Court review argued that the two Michigan cases, considered together, would provide the court with a "more substantial record within which to consider and rule upon the common principles" than if the cases were heard separately. The petition also argued that white applicants to Michigan would continue to suffer harm, in

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the form of racial discrimination, as long as the university's admissions policy was left intact.

The Supreme Court's rules provide that the justices may hear a dispute before a circuit-court ruling "only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate practice and to require immediate settlement in this court."

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Bill would require schools to focus on minority hiring

Lawmaker wants districts to monitor job-filling practices

By **NANCY C. RODRIGUEZ**
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 The Courier-Journal

Kentucky schools would be required to focus more energy and time on minority hiring and racial diversity under legislation filed by a Louisville lawmaker.

A bill filed by Democratic Sen. Gerald Neal would require districts to keep data on whether their hiring practices reflect their demographics. The bill applies to teachers and administrators.

"What we want to do is make sure that not only do we have an adequate applicant pool, but we also have the ability for individuals to be considered on multiple levels," Neal said.

None of Kentucky's public school superintendents are minorities, and only 16 are women.

And while 12.4 percent of Kentucky public school students are minorities, nearly 96 percent of their teachers are white, according to the latest statistics kept by the state Department of Education.

The ratio is slightly better in Jefferson County Public Schools, where 16.3 percent of the district's 5,664 teachers are minorities, as well as 32 of the district's 144 elementary, middle and high school principals. Nearly 40 percent of the district's K-12 students are minorities, according to the Department of Education data.

Garnett Phelps, an African American and one of three assistant principals at Ballard High School in Jefferson County, supports Neal's bill and acknowledges it can be difficult for minorities to advance in the system.

"I think what it takes is a lot of preparation and a lot of effort on the part of the staff to give young people a chance," Phelps said. "I think they are available. I think we have young people who are out there trying and putting themselves in a position to be marketable. I just feel like we need to give them an opportunity to grow and develop."

Jefferson County Public Schools have worked on recruiting minority teachers and administrators, said Rita Greer, the district's human-resources coordinator.

"We've had long-standing efforts to recruit minorities, and consequently we have been able to attract more minorities to this area," she said.

Neal, an African American who serves on the Senate Education Com-

MINORITY EDUCATORS	
KENTUCKY PUBLIC SCHOOLS	
40,972 teachers	4.2 percent minority
1,100 principals	Less than 10 percent minority
176 superintendents	No minorities
JEFFERSON COUNTY PUBLIC SCHOOLS	
5,664 teachers	16.3 percent minority
144 principals	22.2 percent minority
SOURCE: KENTUCKY EDUCATION DEPARTMENT, KENTUCKY ASSOCIATION OF SCHOOL ADMINISTRATORS, JEFFERSON COUNTY PUBLIC SCHOOLS	

THE COURIER-JOURNAL



State Sen. Gerald Neal, D-Louisville, has been a persistent advocate of increasing minority hiring in schools, but his past legislative attempts on the issue have failed.



2003 Kentucky General Assembly

mittee, has been a persistent advocate of increasing minority hiring in schools, but his past attempts to pass similar legislation have failed.

Wayne Young, executive director of the Kentucky Association of School Administrators, estimated that less than 10 percent of the state's 1,100 principals are minorities.

"That is an extraordinary figure," Neal said. "All of this while I'm being told, as people have contacted me, that they have not been considered — when their records are impeccable and their qualifications are impeccable. That suggests to me that there is no hue and cry or conviction with respect to diversity in some of these districts and schools."

Under Neal's bill, districts would be required to regularly collect the gender, race and economic status of people who participate in their programs. Districts would use the information before hiring people to determine whether they have adequate minority representation.

Districts also would be required to

adopt hiring guidelines, which would include plans for recruiting minority candidates.

Young said the school administrators association hasn't taken a position on Neal's bill. A spokeswoman for the Kentucky School Boards Association said her organization likes the idea.

"We support the intent of what he is trying to do," said Alicia Sells, the director of governmental relations for the association. "The only thing we need to do is look at it and check on it with our folks about implementation to see if there are any glitches or challenges."

Employing teachers and school leaders with diverse backgrounds brings different perspectives and is important when developing strategies to help diverse student populations, Neal said.

"In addition, it is important for students to observe, be taught by and gain respect for those who are in the position of responsibility and authority, because that is what we are trying to achieve in our schools," he said.

Opponents of Neal's past bills have said that implementing its provisions could strain school boards because of the cost.

Sen. Brett Guthrie, R-Bowling Green, who did not support a version of Neal's bill in 2000, said this week that he thinks there is a need "to look at how to develop a strategy to ensure that we bring minority teachers into the classroom." Guthrie said he needs to review Neal's latest bill before commenting on it.

Neal acknowledges this year's abbreviated legislative session, coupled with the state's revenue shortfall of about \$500 million, could overshadow his bill.

"One thing I have learned in this process is you don't know how this is going to spin out no matter how well you plan it," he said. "What you have to do is fight every step of the way to be in a position to be considered."

Courier Journal
 Sat. Jan. 18, 2003

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Students graduate from Minority Teacher program

Morehead State University is adding the names of two students to its list of graduates from the Minority Teacher Education Program.

LaRaissa Davis of Radcliff and Monika Williams of Bardstown completed the program in December. They were degree candidates during the University's Winter Commencement exercises.

These graduates are an example of MSU's commitment to help curb the shortage of minority teachers in the state, according to Ernestine Winfield, MTEP program coordinator. "The MTEP program strives to recruit, retain and graduate minority students into the professional teaching ranks."

The Minority Teacher Education Program, established in 1988, began as an agreement between Morehead State University, Jefferson and Fayette county school districts and the Council on Higher Education, the forerunner of the Council on Postsecondary Education. In 1992, the Kentucky Department of Education joined the liaison.

The recent graduates bring the number to 62 who have completed the MTEP program. Davis, the daughter of Jesse B. Davis Jr. and Desiree Davis, is a special education major, with an emphasis in learning behavior disorders for



LaRaissa Davis

students in P-12 grades. A graduate of North Hardin High School, she completed her student teaching with the Montgomery County School System this semester.

A four-year member of MTEP, she served as an adviser with the program for one year. In that role, she monitored the progress of other students and assisted them in meeting their needs.

During her college career, Davis was active in numerous academic and social organizations, Black Student Coalition, president, four years; Delta Sigma Theta Sorority, Inc., every office in the chapter and is currently president; Delta Sigma Theta

Sorority, Inc., the state's highest office, Kentucky State Facilitator; and The National Pan-hellenic Council, president, vice president and secretary. She has been a resident adviser/assistant for four years and one year as a peer adviser.

Davis was an on-air announcer for Morehead State Public Radio (formerly WMKY), the University's campus radio station, and tutored at the Multicultural House. A Dean's List student, she was the 2002 recipient of the Greek Woman of the Year Award.

In the spring semester, she will begin studies for a master's degree in sociology at MSU, then obtain a doctoral degree and work for the U.S. Department of Education, performing research on educational trends in relationship to minorities and women. Among her future goals are to be married and raise a family, as well as teach in the public school system and, eventually, become a superintendent.

Williams, an elementary education major with an emphasis on P-5 grades, completed her student teaching at Rosa Parks Elementary School in Lexington this semester. The daughter of Roland Williams, she is a graduate of Bardstown High School.

THE CHRONICLE OF HIGHER EDUCATION

chronicle.com/news

Today's News

Tuesday, January 21, 2003

<http://chronicle.com/daily/2003/01/2003012103n.htm>

Low-Income Families Need More Information About Student Aid, Report Says

Low-income families, who need the most information about student aid, have the least information about how to pay for college, according to a report released Monday by the Sallie Mae Fund.

The report is based on a national poll of parents with children who are 18 to 24 years of age.

The poll found that among those families earning less than \$50,000 a year, 60 percent said that they needed more information about how to pay for college. Only 37 percent of those earning at least \$75,000 a year had the same view. And of families with incomes under \$25,000, 45 percent of parents said they had "no idea" how they could pay for college for their children.

The survey found a gap in the ages at which children start to learn about financial aid. The average age in families with annual incomes over \$75,000 was 14, while the average age for families with annual incomes under \$25,000 was 16.

A racial gap also exists on information about student aid. The poll found that while 44 percent of white parents said that they did not have enough information about paying for college, 66 percent of black parents and 62 percent of Hispanic parents felt that way.

The Sallie Mae Fund is the charitable arm of Sallie Mae, the largest financier of federal student loans.

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THE CHRONICLE OF HIGHER EDUCATION

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Today's News

Tuesday, January 21, 2003

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Bush Will Seek More Money for Historically Black and Hispanic-Serving Colleges

By JEFFREY BRAINARD

Washington

The Bush administration will propose a 5-percent increase for the 2004 fiscal year for programs for historically black colleges and colleges with large Hispanic enrollments. The proposed expenditure, \$371-million, would represent an increase of 9 percent over the 2002 level.

The announcement of the proposal came late Sunday, days after Mr. Bush angered many minority educators when he said his administration would file a brief with the U.S. Supreme Court opposing the University of Michigan's affirmative-action policies. The formal unveiling of the president's 2004 budget is scheduled for early February. But administration officials sometimes highlight particular increases in advance.

The president's spending plan is expected to include very small or no increases for most domestic, nonsecurity programs.

The proposal is good news for historically black and Hispanic institutions, "but is certainly no substitute for a strong and unequivocal statement of support for affirmative action," said Shirley J. Wilcher, executive director of Americans for a Fair Chance, a consortium of civil-rights organizations that supports affirmative action. "We are not deceived by this offer, particularly on Martin Luther King Jr. Day."

The proposed increase would benefit three federal programs that award grants competitively to institutions serving black and Hispanic students for projects like construction, student services, scholarship aid, and faculty development. A total of 99 institutions are eligible to apply for grants under the Strengthening Historically Black Colleges and Universities Program. Eighteen institutions are eligible for money from the Strengthening Historically Black Graduate Institutions Program. The Developing Hispanic-Serving Institutions Program aids colleges where at least a quarter of the full-time students are Hispanic, with at least half of those students considered low-income.

Over all, Mr. Bush wants to increase support for the three programs by 30 percent from 2001 to 2005. When he was running for president in 2000, Mr. Bush proposed increases over five years of 77 percent for the two programs for historically black institutions and 90 percent for Hispanic-serving institutions.

Congress has not yet passed an appropriations bill financing the Department of Education, which supports the three programs, for the 2003 fiscal year.

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President Bush had requested an increase for the three programs for 2003 as well. For the Historically Black Colleges and Universities program, Mr. Bush asked Congress for \$213.4-million in 2003 and \$224-million in 2004, up from \$206-million in 2002.

The graduate program would get \$50.8-million in 2003 and \$53-million in 2004, compared with \$49-million in 2002. And the Hispanic-serving program would get \$89.1-million in 2003 and \$94-million in 2004, up from \$86-million in 2002.

Roderick R. Paige, the secretary of education, mentioned the budget proposals during a ceremony here on Monday honoring the Rev. Martin Luther King Jr. "To honor the legacy of Dr. King, we must continue to support the institutions that offer our minority and disadvantaged students opportunities through higher education," he said.

The proposal also drew support from U.S. Rep. John A. Boehner, an Ohio Republican who is chairman of the House of Representatives Committee on Education and the Workforce. "The president's decision to significantly boost funding for these institutions at a time when few programs can receive major increases is a powerful statement about his priorities," Mr. Boehner said in a statement. "It's an unmistakable sign of the president's commitment to ensuring that a quality higher education is available to every American who strives for it."

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Diversity good, KSU leader says

By BETH CRACE
State Journal Staff Writer

Kentucky State University needs to embrace its diversity for the school to move forward, President William H. Turner said in a ceremony honoring Martin Luther King Jr. Tuesday.

It was the first public address for Turner since he was hired in December as the school's interim president.

Students, teachers and others packed into Bradford Hall Auditorium as part of KSU's celebration of King's life. It was for some their first chance to see and hear the new president.

Turner quickly diverted the emphasis of his speech from King to the school's own need for unity. He said both the faculty and student body are rich in different cultures and ethnic backgrounds.

"We are going to leverage the diversity of KSU," said Turner.

A native of Harlan County, Turner

served as dean of arts and sciences at KSU under the Raymond Burse administration. Turner currently is president of Turner and Associates, a consulting firm based in North Carolina.

The 56-year-old veteran educator, will replace Paul Bibbins, who'd been serving in a short-term interim capacity since President George Reid was fired in June.

Turner said KSU has played an important part in his own history. He said every teacher who taught him in the first through 12th grades was a KSU graduate.

He said he learned the school's credo, "Enter to learn; depart to serve," early on and wants to pass that along during his time at the university.

"Then my serving as interim will not have been in vain," he said.

The new president began his speech by paying tribute to King. He said he was involved with the civil rights movement.

See KSU, A9



State Journal/Amy Wallot

In his first address on campus, Kentucky State University's interim president William Turner focused on his vision for the university. After his speech he was presented the key to the city of Frankfort by City Commissioner Tracey Thurman.

while still a student at the University of Kentucky and filled in for Muhammad Ali to speak at the school the night King was shot in Memphis.

Turner said he could talk about King's accomplishments, but it was more important Thursday to talk about the "dream of Kentucky State University."

"I know very well what the politically correct thing to say is," said Turner. "... I decided to be straightforward no matter the cost."

Turner said his dream for KSU was a variation of King's dream. He used the short story "Rip Van Winkle" as an analogy for those who'd seemingly "slept through" the changes KSU has undergone since the days preceding the civil rights movement and desegregation when the school was under-funded.

"For too long, politicians, pundits, presidents and average citizens and taxpayers have sailed around the issues facing Kentucky State," he said.

He said over the years, the changes the university has been through have resulted in a diverse faculty and staff who often don't know how to work together.

"It is time for us to forge new psychological... and relational

responses to the new realities," he said.

He said the local university's diversity among faculty, staff and students rivals many institutions around the country. In reference to those who worry the school's identity as the state's only historically black college might be changed by a diverse faculty and student body, he said the school's significance as the state's only historically black college has been sealed.

He said people need to realize the university's role has changed.

"Since history will not allow us to move backward, then we can only go forward," he said. "And we can only go forward together."

Now is the time, Turner said, to begin looking at the school's diversity as an asset.

"KSU is on the edge of the knife," said Turner. "And all we need to do, ladies and gentlemen, is sharpen that knife."

His remarks received a thunderous standing ovation and words of praise from the audience.

"It was very inspiring," said Tina Phillips a dorm director at the school.

Phillips said she knew Turner when he was a dean at the school and his presence brings a feeling of



State Journal/Army Weir

Jacob Marmion, a Collins Lane Elementary student, received a hug from Franklin County Board of Education member and Kentucky State University professor William Coffield Tuesday during Martin Luther King Jr. celebrations. Marmion received first place in the elementary school division of the "What Dr. King's Dream Means to Me" essay contest. In his essay Jacob wrote, "School is hard enough, I don't want to have to worry about hate."

optimism to campus and "the feeling that the blood is warm again and that we have a chance."

Nabil Boudissa, a junior at the school, agreed.

"It was very eloquent, very inspiring," said Boudissa.

Boudissa said people need to trust in the new president.

"At Kentucky State, the foundation is based on trust," said Boudissa. "In order for us to believe in what he said, we have to put our trust in him."